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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,347	02/12/2002	Charles E. Taylor	SHPR-01028US5 SRM	6103
23910	7590	11/08/2004	EXAMINER	
FLIESLER MEYER, LLP FOUR EMBARCADERO CENTER SUITE 400 SAN FRANCISCO, CA 94111			MCDONALD, RODNEY GLENN	
			ART UNIT	PAPER NUMBER
			1753	

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/074,347

Applicant(s)

TAYLOR ET AL.

Examiner

Rodney G. McDonald

Art Unit

1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8-12, 21, 23, 26, 28-31, 33 and 39-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-12, 21, 23, 26, 28-31, 33 and 39-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-2-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5-6, 8-12, 21, 23, 26, 28-31, 33 and 39-56 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 71-78 and 83 of copending Application No. 10/074,096. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 71-78 and 83 suggested the claimed subject matter of Applicant's claims. Specifically referring to claims 71 and 83 of Application No. 10/074,096 an air conditioner device is taught with air inlets and outlets. The inlets and outlets have louvers that are planar and extend parallel to one another. There is an ion generator present between the inlet and outlet. A germicidal lamp is positioned in the housing such that a user looking through the inlet or the outlet cannot view UV radiation emitted from the lamp. (See Claims 71-78 and 83 of Application No. 10/074,096)

The differences between Claims 71-78 and 83 of Application No. 10/074, 096 and the present claims is that the user looking through the housing through the inlets is not discussed.

As to the user being able to look through the inlet to see through the housing to the outlet or the user being able to look through the outlet to see through the housing to the inlet claims 71-78 and 83 do not limit the location of the inlet and outlet therefore the inlet and outlet could be interpreted to be arranged to be directly across from one another allowing the flow of air. Since the inlet and outlet would be directly across from one another one could see through the inlet or outlet across the housing to the inlet or outlet due to the geometry of the inlet and outlet louvers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

Applicant's arguments filed July 2, 2004 have been fully considered.

Applicant's arguments with respect to the 35 U.S.C. 102 and 103 rejections have been considered and are deemed persuasive. Applicant's arguments with respect to some of the Obviousness type Double Patenting rejections have been considered and are deemed persuasive. The remaining Obviousness type Double Patenting rejection relies on co-pending Application 10/074,096 for rejection.

Specifically Applicant has argued that the amendments to the claims have overcome the obviousness type double patenting rejections. This is not found persuasive with respect to co-pending Application 10/074,096 because Applicant has

not set forth the reasons for distinction. While Applicant's amendment requires that a user be able to look into the housing between the air inlet louvers to see through the housing and out of the air outlet or visa versa and provides for the user not to be able to see the germicidal device it is urged that Claims 71-78 and 83 teach these required limitations either explicitly or inherently. Claims 71-78 and 83 do explicitly teach preventing direct viewing of the germicidal device when looking through the inlet or outlet. Claims 71-78 and 83 are absent discussion of a user be able to look into the housing between the air inlet louvers to see through the housing and out of the air outlet or visa versa however broadly interpreted and as set forth in the obviousness type double patenting rejection above one can interpret such that this limitation is met. Specifically claims 71-78 and 83 of 10/074,096 do not limit the location of the inlet and outlet therefore the inlet and outlet could be interpreted to be arranged to be directly across from one another allowing the flow of air. Since the inlet and outlet would be directly across from one another one could see through the inlet or outlet across the housing to the inlet or outlet due to the geometry of the inlet and outlet louvers (i.e. being planar and parallel to one another). For this reasoning it is believed that the obviousness type double patenting rejection on Application 10/074,096 should be maintained.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

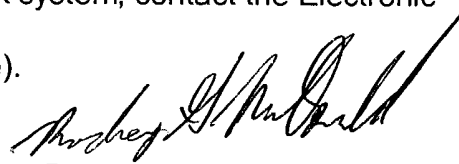
Art Unit: 1753

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney G. McDonald whose telephone number is 571-272-1340. The examiner can normally be reached on M- Th with Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney G. McDonald  
Primary Examiner  
Art Unit 1753

RM  
September 15, 2004